



September 15, 2000

Ms. Elaine S. Hengen
Assistant City Attorney
Office of the City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2000-3554

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139057.

The City of El Paso (the "city") received the following request:

- (1) All information pertaining to money kept in the police chief's case and how that money is accounted for. This would be for the time period of 1998-date of this request.
- (2) All information pertaining to the revenue generated by Texas Commission for the Blind's cafeteria at 911 N. Raynor, and the lease terms for that space.

You state that you have made the following records available: expired snack bar lease, copies of the statements of profit or loss from the snack bar operators, some notes made by the city's internal auditor, and a memorandum from the Mayor to the Chief of Police regarding the operation of a cash fund. You claim that the remaining requested information, which consists of cash receipts and accounting ledgers relating to the expenditure of cash funds, is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim that the submitted information is evidence in a criminal investigation being conducted by the El Paso Police Department's Public Integrity Unit and, therefore, the information may be withheld under section 552.108. However, section 552.022(a) of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Section 552.108 is a discretionary exception under the Public Information Act and is, therefore, not other law that makes the submitted information confidential. *See Open Records Decision No. 473 at 2 (1987)* (discretionary exceptions under the Public Information Act can be waived). The submitted information contains accounts and receipts which relate to the expenditure and receipt of public funds by the police department. Therefore, we believe that the submitted information is public under section 552.022(a)(3) and may not be withheld under section 552.108.

However, you also assert that one of the receipts contains the home address of a police officer. Section 552.117(2) excepts from disclosure information that relates to the home address, home telephone number, social security number, or family member information of a peace officer. Therefore, you must withhold the home address of the police officer under section 552.117(2) but you must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB\er

Ref: ID# 139057

Encl: Submitted documents

cc: Mr. Patrick C. McDonnell
El Paso Times
P. O. Box 20
El Paso, Texas 79999
(w/o enclosures)